

By the 3d sec. of the act of 1841, a divorce *a mensa et thoro* may be granted for abandonment and desertion, without regard to its duration, or the absence of the party complained against from the state.

The parties in this case, executed a deed of separation, by which, provision was made for the support of the wife and children, and by which, these parties mutually agreed, during their joint lives to live separate and apart from each other. **HELD—**

That this deed, so long as the terms of it are complied with on the part of the husband, exonerates him from the obligation to support his wife, and is a protection against any claim which can be made upon him for supplying her even with necessaries.

That by this deed, the parties have placed themselves very much in the condition, with respect to each other, which the law would have empowered the court to do, by granting a divorce *a mensa et thoro*, and, therefore, such a decree is unnecessary, and perhaps improper.

There being no allegation or proof, that any circumstance had transpired since the execution of the deed, rendering it necessary that the relations of the parties as established by that instrument, should be changed, the court refused to decree a divorce *a vinculo*, as the effect of such a decree upon the rights secured by the deed, might occasion injurious consequences.

[The bill in this case was filed on the 6th of July, 1846. All its material averments, as well as the admissions and defences taken in the answer and proofs in the cause, are fully stated in the opinion.]

The complainant's solicitor, J. J. SPEED, Esq., contended in his argument, that there can be no doubt that the act of 1844, repeals that part of the 2d section of the act of 1841, requiring a residence out of the state; and that the fourth ground of absolute divorce is thereby so modified as to require a separation of a hopeless character, of only three years in the state or out of it. The first paragraph of the act of 1844, absolutely and unconditionally repeals the requisition of foreign residence, and that very justly and properly, for otherwise it would be difficult to understand why it was ever placed in the law.]

THE CHANCELLOR:

On the 6th of July, 1846, the complainant filed his bill in this court, praying for a divorce *a vinculo matrimonii*, from the defendant, his wife, to whom he was married in the year 1824. The parties are both now, and always have been, citizens of